

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2012-177-WS

IN RE: Application of Tega Cay Water)
Service, Inc. for adjustment of)
rates and charges and modifications)
to certain terms and conditions)
for the provision of water and sewer)
service)

OBJECTIONS AND
MOTION TO STRIKE
TESTIMONY

Tega Cay Water Service, Inc. ("TCWS") makes the following motions in regard to the testimony taken by the Commission in the above referenced docket at the public night hearing held on December 3, 2012.¹

1. TCWS objects to the introduction of and moves to strike the following testimony of Ms. Linda Stevenson:
 - a. Photograph of a sewerage overflow dated February 7, 2010 on slide 1 of Exhibit 1. Ex. p. 5²
 - b. Photograph of sewerage overflow dated January 27, 2010 on slide 5 of Exhibit 1. Ex. p. 9.
 - c. Photographs of sewerage spill and erosion dated March 25, 2006, at slides 6, 7 and 14 of Exhibit 1, Ex. pp. 10, 11, 18.
 - d. Testimony regarding a sanitary sewerage overflow which purportedly took place in March of 2006 at Tr. pp. 34, l. 19 – 35, l. 9.

TCWS objects to this testimony and exhibits on the grounds that is not relevant to these proceedings because the events to which they relate occurred outside of the test year for this case, and is too remote to have probative value. SCRE Rule 402; State v. Bright, 473 S.E2d 851, 853 (S.C. Ct. App. 1996). Even if found relevant, the events purportedly described by Ms.

¹ All subsequent citations are to the transcript of the Public Hearing held on 12/03/2012; for the sake of brevity they will simply cite to the relevant page, line, and/or exhibit numbers and omit the full hearing citation.

² TCWS has consecutively Bates Numbered the exhibits introduced at the hearing for ease of reference, page references are included in this motion with preceding zeroes omitted. Copies of referenced pages are attached to this motion.

Stevenson and depicted in the photographs are sufficiently remote in time, and so devoid of foundational facts, that its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, and its potential to mislead the Commission, and therefore should be excluded pursuant to SCRE Rule 403.

Each of the photographs described above was taken *before* July 13, 2010 the date on which the Commission held its merits hearing in TCWS's *preceding rate case*. See Docket No. 2009-473-WS. In fact, the three photographs of the sewerage spill of March 25, 2006, listed in item "c" above, were introduced into evidence by Ms. Stevenson in the prior rate case. See Hearing Tr. May 19, 2010, Docket No. 2009-473-WS, p. 85, l. 24 – p. 86, l. 9; p. 11, ll. 2-21, and Hearing Exhibit No. 10. The Commission has already considered this evidence, and did not find it to be the basis for any finding of fact or conclusion of law warranting a denial of rate relief.

TCWS also objects to and moves to strike the following pages of Exhibit 1 on the grounds that they are inadmissible hearsay evidence under SCRE Rule 802:

- a. Water and sewer bill on p. 36 of Exhibit 1. There is no testimony to support the relevance or probative value of this exhibit; it should be excluded pursuant to SCRE Rules 402 and 403.
 - b. Email correspondence from Paul and Dorinda Wagner at pp. 38-40 of Exhibit 1. This is inadmissible hearsay testimony under SCRE Rule 802.
 - c. Email correspondence from George Cole to George Hice at pp. 41-42 of Exhibit 1. This is inadmissible hearsay testimony under SCRE Rule 802.
 - d. Email correspondence from Linda Stevenson to Chad Campbell, forwarding email message from George Needham at pp. 43-44. This is inadmissible hearsay testimony under SCRE Rule 802.
2. TCWS objects to the introduction of and moves to strike the seventh page of Steve Kunzman's Public Hearing Exhibit No. 2 (Ex. p. 56) on the following grounds:
- a. The photograph, for which Mr. Kunzman offered no foundation except to say that it was submitted by a "concerned citizen" (Tr. p. 53, l. 11), is inadmissible hearsay testimony, and should be excluded pursuant to SCRE Rule 802.
 - b. The photograph which purportedly describes an event that took place on March 1, 2009, is not relevant to these proceedings because the event, which was outside of the test year for this case, and took place before the company's previous rate case, is too remote to have probative value. SCRE Rule 402; State v. Bright, *supra*.
 - c. Even if found relevant, the event purportedly described by the photograph is sufficiently remote in time, and so devoid of foundational facts, that its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, and

its potential to mislead the Commission, and therefore should be excluded pursuant to SCRE Rule 403.

3. TCWS objects to and moves to strike Steve Kunzman's testimony at Tr. p. 55, l. 18-21, which states "During our visit, some of the neighbors came out, and said that it had never really been locked until recently", and on the 16th slide of Mr. Kunzman's Exhibit No. 2 (Ex. p. 65) which states "During our visit the neighbors said that until recently this was never locked", on the grounds that these statements are inadmissible hearsay under SCRE Rule 802.

TCWS objects to and moves to strike Mr. Kunzman's testimony in which he states: "These are like tools that, I guess, Utilities, Inc. has made, and they use to resolve their problems with this lift station. They all look homemade and are left on site, which indicated to me, and again, I'm not a professional in this, but it indicates maybe there's an ongoing problem with the lift station." Tr. p. 56, ll. 2-8. TCWS also objects to and moves to strike the following statement from the 20th Slide of Mr. Kunzman's Exhibit No. 2 (Ex. p. 69): "All look home made and are left at the site which could indicate there is an ongoing problem".

Both of the statements cited above, which contain opinions that Mr. Kunzman himself admits he is not qualified to make, are inadmissible pursuant to SCRE Rule 701, which prohibits inferences or opinions from lay witnesses which are not rationally based on the perception of the witness, are not helpful to a clear understanding of the witnesses' testimony or the determination of a fact issue, and require special knowledge, skill or experience or training. Mr. Kunzman clearly does not know the purpose of the tools in question, and has no basis for concluding that their presence at the lift station is an indication of an "ongoing problem" or "problems".

4. TCWS objects to and moves to strike the following language on the 25th slide of Exhibit 2 (Ex. p. 74): "Neighbors have reported seeing the "big trucks" a lot on their street with long hoses going into a manhole" as inadmissible hearsay. SCRE Rule 802. For the same reason, TCWS also moves to strike Mr. Kunzman's testimony on p. 57, l. 1-7.
5. TCWS objects to and moves to strike the testimony of Jerry Church concerning the contents of a video that "shows some of the media coverage". pp. 83, l. 17 – 84, l. 6. The matters related in this testimony, of which Mr. Church had no direct knowledge, are inadmissible hearsay under SCRE Rule 802.
6. TCWS objects to and moves to strike the testimony of Gina Hartmeier comparing her bills to those of her ex-husband at p. 160, 18 – 161, l. 21, and accompanying Exhibit 8 (Ex. p. 131). Testimony regarding her ex-husband's utility bills is inadmissible hearsay pursuant to SCRE Rule 802.

7. TCWS objects to and moves to strike the testimony of Elizabeth Duda³ at pp. 180, l. 18 – 181, l. 9, concerning events which took place on March 1, 2009, outside of the test year, on the grounds that it is not relevant to the case. SCRE Rule 402. The events described are too far removed to have probative value in this case. State v. Bright, *supra*.
8. TCWS objects to and moves to strike the testimony of Elizabeth Duda at pp. 182, l. 24 – 183, l. 9, in which Ms. Duda testified to what Ms. Carrie Thorsby purportedly *would have testified to* before the Commission had she been present. This testimony is inadmissible hearsay and should be excluded pursuant to SCRE Rule 802.

To the extent that its objections and motions are denied, TCWS reserves its right to offer responsive testimony. See S.C. Const. art, I, §22.

Respectfully submitted,



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³ This surname is spelled "Douda" in the transcript, but TCWS believes the correct spelling is "Duda".